

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRENTON DWAYNE THOMPSON,

CASE NO. 09-5265 RJB/KLS

Petitioner,

ORDER ON REPORT AND RECOMMENDATION

BRIAN WILLIAMS,

Respondent.

This matter comes before the Court on the Report and Recommendation of U.S.

17 Magistrate Judge Karen L. Strombom. Dkt. 51. The Court has considered the Report and
18 Recommendation, objections, if any, and the remaining record.

19 Pursuant to 28 U.S.C. § 2254, Petitioner filed this habeas corpus petition to challenge his
20 conviction for first degree murder and first degree assault. Dkt. 7. Petitioner presents ten issues
21 for review:

1. The accomplice liability jury instruction relieved the State of its burden to prove every element of the offense of first degree murder.
2. Trial counsel's failure to bring a motion for new trial rendered his assistance ineffective.

3. The exclusion of hearsay statements from trial violated Thompson's right to due process and a fair trial.
4. The trial court's instruction on jury unanimity violated Thompson's right to due process.
5. Evidence presented at trial was constitutionally insufficient to support a first degree murder and assault conviction.
6. Admission of other crimes evidence to prove an element of another crime was error and an abuse of discretion.
7. The trial court's jury instruction regarding the admission of evidence denied Thompson's right to due process.
8. The trial court's admission of prior testimony violated Thompson's constitutional right to confront and cross-examine witnesses.
9. Failure to instruct the jury on the elements of the sentence enhancement denied Thompson his constitutional right to trial by jury.
10. The firearm enhancement and community placement portion of the sentence is in excess of the statutory maximum for the crime.

Dkt. 51 (*citing* Dkt. 7). The Report and Recommendation, filed May 25, 2011, recommends the denial of the petition and dismissal of the case. Dkt. 51. The Report and Recommendation further recommends a denial of the certificate of appealability. *Id.* The facts and relevant procedural history are in the Report and Recommendation (Dkt. 51, at 1-7) and are adopted here by reference.

The Report and Recommendation should be adopted. The petition for habeas corpus should be denied and the case dismissed. Petitioner has not demonstrated that an evidentiary hearing is warranted. Petitioner has failed to show that the Washington courts' adjudication of his claims for relief (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. §2254(d). The certificate of appealability should be denied.

1 Accordingly it is **ORDERED** that,

2 • The Report and Recommendation (Dkt. 51) is **ADOPTED**;

3 • The Petition is **DENIED** and the case is **DISMISSED**; and

4 • The Certificate of Appealability is **DENIED**.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record, to
6 any party appearing *pro se* at said party's last known address, and the Hon. Karen L. Strombom.

7 Dated this 24th day of June, 2011.

8 
9 Robert J. Bryan

10 ROBERT J. BRYAN
11 United States District Judge